

<b>REGISTERED NUMBER:</b>	5/2020/2400/COU
<b>APPLICANT:</b>	Mr & Mrs Lee
<b>PROPOSAL:</b>	Variation of Condition 8 (hours of opening) 13 (restricted A3 Use) and Removal of Condition 16 (restricted numbers) of planning permission 5/2007/2108 dated 14/01/2008 for extension to the existing Class A3 use. Proposal to allow Mon-Wed 08:00-18:00, Thurs-Fri 08:00-20:00, Sat - 08:00-21:00 and Sunday and Bank Hol - 08:30-17:00 with extended external eating area and removal of limit to number of tables and occupancy in outside area (resubmission following refusal of 5/2019/1063 dated 13/11/2019)
<b>SITE:</b>	The Secret Garden Cafe 9a George Street St Albans Hertfordshire AL3 4ER
<b>APPLICATION VALID DATE:</b>	15/10/2020
<b>HISTORIC BUILDING GRADE:</b>	N/A
<b>CONSERVATION AREA:</b>	St Albans (No. 11)
<b>DISTRICT PLAN REVIEW:</b>	St Albans Town
<b>WARD</b>	Verulam

<b>RECOMMENDATION</b>	<b>REFUSE PLANNING PERMISSION</b>
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**1. Reasons for Call in to Committee**

- 1.1. The application has been called into committee if minded to grant by Cllr. E. Hill for the following reason:
- 1.2. *Having reviewed application 5/2007/2108 & 5/2019/1063 and the conditions applied then, I can see no reason why these should be removed as none of the criteria for their implementation have changed. Therefore : Condition 8. The use shall not be open to customers outside the times: 08:00 hours and 18:00 hours on Mondays to Saturdays inclusive and 10.00 hours and 17:00 hours on Sundays and Public Holidays. Any customers remaining on the premises after those hours shall leave the premises not later than 18:20 hours on Mondays to Saturdays inclusive and not later than 17:20 hours on Sundays and Public Holidays, should remain. Reason 8. To safeguard the amenities of the locality and residential occupiers. To comply with Policies 9 & 57 of the St. Albans District Local Plan Review 1994. Condition 13. The area of the property used for the tea room and external eating area shall be limited to that shown on amended drawing no 'Nov 07' received on the 21/11/07 and the use hereby permitted shall not extend into any other part of the premises without the prior written permission of the Local Planning Authority, should remain. Reason 13. To safeguard the amenities of the nearby residents and the character of the Cathedral Precinct. To comply with Policies 9, 57 and 85 of the St. Albans District Local Plan Review 1994. Condition 16. There shall be no more than 6 tables accommodating a maximum of 24 people in each of the two sections of the outside area (the courtyard and the rear garden) should remain. Reason 16. In the interests of the amenity of nearby residential properties. To*

*comply with Policy 9 of the St. Albans District Local Plan Review 1994. Condition 3. No deliveries shall be taken at or dispatched from the site outside the following times 07:30 hours and 19:00 hours nor at any time on Sundays, Bank or Public Holidays. Should remain. Reason 3. In the interests of the amenity of nearby residential properties. To comply with Policy 9 of the St. Albans District Local Plan Review 1994. Condition 5. No waste materials generated as a result of the proposed demolition and/or construction operations shall be burnt on the site. All such refuse shall be disposed of by suitable alternative methods. Should remain Reason 5. To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties. To comply with Policies 9 and 70 of the St. Albans District Local Plan 1994.*

- 1.3. The application has been called into committee if minded to grant or refuse by Cllr. M. McNeil for the following reason:
- 1.4. *The previous planning application was considered by the planning committee (5/2019/1063).*

*For consistency this resubmission should be determined in the same way. The committee need to consider the intervening planning appeal decision and the attempts to in the current scheme to overcome the Inspectors concerns.*

*The application needs to be assessed against local plan review policies 9, 57 and 85 as well as the sections 6 and 7, Ensuring the Vitality of the Town Centre of the NPPF, together with the current promotion of 'Focus on George Street'."*

*In addition, the committee need to consider the current proposal against Policy 19 Employment to provide sufficient land and floorspace to cater for full employment as well as Section 11 Tourism.*

*Also, the committee need to assess the scheme against Planning Policy 51 Shopping and Service Use – to maintain and enhance the vitality and viability. I have not predetermined this application*

## **2. Relevant Planning History**

- 2.1. **5/2019/1063-** Variation of Condition 8 (hours of opening) 13 (restricted A3 Use) and Removal of Condition 16 (restricted numbers) of planning permission 5/2007/2108 dated 14/018/2008 for Variation of Condition 3 (opening hours) and Condition 5 (restricted area of use (Refusal 13/11/2019)

*Reason: By reason of the increased opening hours and intensification of the courtyard area resulting in the reverberation of sound, the proposal fails to protect the residential amenity of neighbouring properties and the setting of this part of the conservation area and fails to comply with Policies 9, 57 and 85 of the St Albans District Local Plan Review 1994.*

*The application was taken to appeal (Ref. APP/B1930/W/20/3245102) and the appeal was dismissed on 01/09/2020. The main points to note in this appeal are set out below:*

- *In relation to condition 13 relating to the external eating area, the inspector noted 'Given the proximity of neighbouring residential uses, it is considered that Condition 13 is both reasonable and necessary in restricting the extent and location of outdoor seating areas at the appeal site and would continue to serve a*

*useful purpose in safeguarding the amenity of nearby residents. The appellant makes the point that the proposed seating area would occupy an area of underused space as well as unifying the two permitted areas of outdoor seating. Yet, this would be at the expense of imposing harm upon the living conditions of neighbouring residential occupiers.'*

- In relation to condition 16 which limits the number of tables the inspector noted the following *'Given the proximity of neighbouring residential uses, it is considered that Condition 13 is both reasonable and necessary in restricting the extent and location of outdoor seating areas at the appeal site and would continue to serve a useful purpose in safeguarding the amenity of nearby residents. The appellant makes the point that the proposed seating area would occupy an area of underused space as well as unifying the two permitted areas of outdoor seating. Yet, this would be at the expense of imposing harm upon the living conditions of neighbouring residential occupiers. Therefore, the condition is necessary and reasonable at this sensitive location close to residential occupiers. The appellant considers that condition 16 fails the test of enforceability. However, it is clear from the wording of the condition what the limits are on the number of tables and customers that can be seated in the two areas defined. These could be counted without difficulty to ensure compliance; therefore, I consider that the condition is enforceable.'*

- In relation to condition 8 relating to the opening hours, the inspector noted the following *'The café's proximity to neighbouring residential occupiers requires careful control of the activity emanating from it, given that the use involves the consumption of food and drink in an external open-air setting. The control of opening hours is one of the means of ensuring those neighbouring living conditions are safeguarded. Consequently, condition 8 continues to be necessary and reasonable in this regard.'*

- The appeal inspector concluded the following: *'However, I found that increasing the opening hours into the evening would be harmful, whilst the economic benefits, although positive, would be outweighed by the proposal's harmful effects on the living conditions of neighbouring residential occupiers. Whilst I found that the proposal would incur no harm upon the SACA, this would be a neutral effect that neither weighs in favour or against the proposal. Accordingly, varying conditions 8 and 13 and removing condition 16 is not supported. For the reasons set out above the appeal is dismissed.'*

2.2. **5/2008/2135-** Discharge of Conditions 4 (ventilations scheme) and 18 (landscape works) of planning permission 5/07/2108 dated 28/01/08 for Variation of Condition 3 (opening hours) and Condition 5 (restricted area of use for Class A3 use and garden) and removal of Condition 4 (Class A3 use ancillary to Class A1 retail use only) and Condition 6 (no food or drink shall be sold for consumption off the premises) of planning permission 5/98/1875 to allow Class A3 use to rear building to not be ancillary to Class A1 retail use, to provide takeaway facility, extension to Class A3 use to rear part building and external seating area and extension of opening hours to 08.00 to 18.00 hours Mondays to Saturdays and between 10.00 to 17.00 hours Sundays and Bank Holiday Mondays (Approved 06/11/2008).

2.3. **5/2007/2108-** Variation of Condition 3 (opening hours) and Condition 5 (restricted area of use for Class A3 use and garden) and removal of Condition 4 (Class A3 use ancillary to Class A1 retail use only) and Condition 6 (no food or drink shall be sold for consumption off the premises) of planning permission 5/98/1875 to allow Class A3 use to rear building to not be ancillary to Class A1 retail use, to provide

takeway facility, extension to Class A3 use to rear part building and external seating area and extension of opening hours to 08.00 to 18.00 hours Mondays to Saturdays and between 10.00 to 17.00 hours Sundays and Bank Holiday Mondays (Conditional permission 14/01/2008).

- 2.4. **5/2007/1890**- Certificate of Lawfulness (proposed) - Change of use from part Class A1 (retail) and Class A3 (cafe) to full Class A3 (cafe) (Withdrawn).
- 2.5. **5/1998/1875**- Change of use from retail (Class A1) to tearoom (Class A3) (Conditional permission 04/12/1998).
- 2.6. **5/1998/0412**- Change of use from storage to tea garden and retail sales to be ancillary to the St Albans Antiques Centre (Conditional permission 05/05/1998).
- 2.7. **5/1996/1973**- Change of use from storage to tea garden and storage to retail (Conditional permission 12/03/1997).

### **3. Site Description**

- 3.1. This application relates to number 9 George Street, which is situated on the southern side of George Street and backs onto the Cathedral. George Street is located within the St Albans Conservation Area and is within a designated Primary Shopping Frontage. The surrounding area is mixed in character with a diverse built form comprising commercial and residential land uses.

### **4. The Proposal**

- 4.1. Variation of Condition 8 (hours of opening), 13 (restricted A3 Use) and Removal of Condition 16 (restricted numbers) of planning permission 5/2007/2108 dated 14/01/2008 for Variation of Condition 3 (opening hours) and Condition 5 (restricted area of use for Class A3 use and garden) and removal of Condition 4 (Class A3 use ancillary to Class A1 retail use only) and Condition 6 (no food or drink shall be sold for consumption off the premises) of planning permission 5/98/1875 to allow Class A3 use to rear building to not be ancillary to Class A1 retail use, to provide takeway facility, extension to Class A3 use to rear part of building and external seating area and extension of opening hours to 08.00 to 18.00 hours Mondays to Saturdays and between 10.00 to 17.00 hours Sundays and Bank Holiday Mondays
- 4.2. The application seeks approval for the following amendments to the approved conditions of planning permission reference 5/2007/2108:

#### Condition 8:

Variation of Condition 8 (hours of opening). Condition 8 of planning permission 5/2007/2108 states:

*The use hereby permitted shall not be open to customers outside the following times: 08:00 hours and 18:00 hours on Mondays to Saturdays inclusive and 10.00 hours and 17:00 hours on Sundays and Public Holidays. Any customers remaining on the premises after those hours shall leave the premises not later than 18:20 hours on Mondays to Saturdays inclusive and not later than 17:20 hours on Sundays and Public Holidays.*

*Reason: To safeguard the amenities of the locality and residential occupiers. To comply with Policies 9 & 57 of the St. Albans District Local Plan Review 1994.*

This application proposes to change the opening hours to 08:00 to 18:00 hours Mondays to Wednesday, 08:00 to 20:00 Thursday to Friday, 08:00-21.00 Saturday and 08:30 and 17:00 hours Sundays and Bank Holiday Mondays.

**Condition 13:**

Variation of Condition 13. Condition 13 of planning permission 5/2007/2108 states:

*The area of the property used for the tea room and external eating area shall be limited to that shown on amended drawing no 'Nov 07' received on the 21/11/07 and the use hereby permitted shall not extend into any other part of the premises without the prior written permission of the Local Planning Authority.*

*Reason: To safeguard the amenities of the nearby residents and the character of the Cathedral Precinct. To comply with Policies 9, 57 and 85 of the St. Albans District Local Plan Review 1994.*

The proposed extended area of seating is proposed to the north of the existing external seating area, as shown on DRWG DG/1a.

**Condition 16:**

Removal of condition 16. Condition 16 of planning permission 5/2007/2108 states:

*There shall be no more than 6 tables accommodating a maximum of 24 people in each of the two sections of the outside area (the courtyard and the rear garden)*

*Reason: In the interests of the amenity of nearby residential properties. To comply with Policy 9 of the St. Albans District Local Plan Review 1994.*

In addition to the amendments to the above conditions proposed, the application seeks the following development:

An additional external seating area, encompassing an area of 35 square metres area, located along the western boundary of the site on the western side of the reinstated pathway.

## **5. Representations**

### **5.1. Publicity / Advertisement**

Site and Press Notices	26/11/2020	Expiry Date	21/12/2020
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### **5.2. Adjoining Occupiers**

5.2.1 The Cathedral and Abbey Church of St Stephen, and No.'s 1a, 1b, Flats 1 and 2 9 George Street, 4a, Ground Floor rear 5-6 George Street, 4a, 7, 8, 9, 9b 10, 10a, 11, 12A, Right Hand Shop and Left Hand Shop No.'s 23 George Street., 23b, 23c, 23d, 23e, 24, 24a, 24, George Street were notified on 23/11/2020.

5.2.2. A letter has been received on behalf of No.'s 10/10a George Street, 11 George Street, 14 George Street, 16 George Street, 22/22a George Street and 1a George Street objection got the developing with the following points summarised:

- The proposed hours demonstrate how the applicants wish to change their business from that of a Cafe to restaurant and beyond.
- Residential density has increased since this determination due to shops being converted into residential use within George Street.
- The present 10am opening on Sundays offers this window of respite.
- The divide between afternoon and evening is 18:00 that is supported by both Clause 36 of the Appeal Decision and planning condition 8. There is therefore no justification in increasing the current permitted hours.
- The Inspector determined that any increase in these three conditions would be harmful
- The supporting statement does not take into consideration the appeal decision
- Refuse should be provided for within the amended plan. Noise nuisance from bottles being thrown is currently an issue.

5.2.3. Alongside the application submission, correspondence from a number of properties has been submitted in support of the application with a written petition signed by 158 persons. In addition, an electronic petition has been submitted alongside the application in support of the application. At the time of submission the petition had been signed by 1950 persons. A verbal update on the number of persons to sign the petition will be given at the time of the committee meeting.

5.2.4. A letter has also been received from St Albans BID in support of the application.

## **6. Consultations:**

### 6.1. District Archaeologist

6.1.1. No response has been received. However, no concerns were raised previously.

### 6.2. Environmental compliance

6.2.1. The objections previously raised in relation to amenity are still relevant. Our objection to vary and remove the conditions (as applied for historically and in the current application) 5/2020/2400, remains.

6.2.2. Previous response:

*'The conditions were originally applied to protect the residential amenity and special characteristics of Cathedral and those seeking to enjoy it. The purpose of limiting the number of tables/chairs/number of people/outside area, to be used, was to try and achieve a balance between the business requirements and it's context. The conditions originally applied, served to mitigate against an intensification of the same activities, which would potentially impact negatively on neighbouring amenity.'*

### 6.3. Historic England

6.3.1. No objection.

## **7. Relevant Planning Policy**

7.1. National Planning Policy Framework

Section 6. Building a strong, competitive economy

Section 7. Ensuring the vitality of town centres

Section 12.Achieving well-designed places  
Section 16.Conserving and enhancing the historic environment

7.2. St. Albans District Local Plan Review 1994:

POLICY 34	Highways Consideration in Development Control
POLICY 39	Parking Standards, General Requirements
POLICY 69	General Design and Layout
POLICY 72	Extensions in Residential Areas
POLICY 85	Development in Conservation Areas
POLICY 87	Locally Listed Buildings

7.3. Supplementary planning Guidance/Documents

St Albans Conservation Area Character Statement- Character Area 4a

7.4 Planning Policy context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise.

The development plan is the St Albans District Local Plan Review 1994.

The NPPF 2019 is also a material consideration.

Paragraph 11 of the NPPF states that there is a presumption in favour of sustainable development.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or  
d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or  
ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Paragraphs 212 and 213 of the NPPF reads as follows:

The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this replacement Framework has made. This should be progressed as quickly as possible, either through a partial revision or by preparing a new plan.

However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight

should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

The degree of consistency of the Local Plan policies with the framework will be referenced within the discussion section of the report where relevant.

## **8. Discussion**

### **8.1. Main issues**

8.1.1 The main issues regarding this application are the principle of the use, the impact on Conservation Area, the effects on neighbouring properties and car parking provision.

### **8.2. Variation of condition 8 (hours of opening) to 08:00 to 18:00 hours Mondays to Wednesday, 08:00 to 20:00 Thursday to Friday, 08:00-21.00 Saturday and 08:30 and 17:00 hours Sundays and Bank Holiday Mondays.**

8.2.1. Policy 9 of the Local Plan (Non-residential uses within residential areas) states *'redevelopment or extensions to existing sites will normally be permitted in residential areas, where they will not adversely affect their amenity, and character by reason of such factors as noise, smell, safety or excessive traffic'*.

8.2.2. Policy 57 of the Local Plan (Service Uses) states *'Use Class A3 (food and Drink proposals should not detract from the visual character of areas or cause serious problems in respect of the following:*

- Traffic and parking
- Noise, fumes, smell and general disturbances
- Litter
- Residential amenity
- Impact on conservation areas, in particular in the vicinity of the Cathedral (i.e. George Street...)

8.2.3. The application proposes to amend the existing opening hours of the café. The original approved opening hours were as follows- 08:00 to 18:00 hours Mondays to Saturdays and 13:00 to 17:00 Sundays and at no times on Bank Holidays; these were amended to 08:00 to 18:00 hours Mondays to Saturdays and 10:00 to 17:00 hours Sundays and Bank Holiday Mondays under application 5/2007/2108. The application proposes to amend these hours to the following- 08:00 to 18:00 hours Mondays to Wednesday, 08:00 to 20:00 Thursday to Friday, 08:00-21.00 Saturday and 08:30 and 17:00 hours Sundays and Bank Holiday Mondays.

8.2.4. It should be noted that under ref. 5/2019/1063 the following hours were applied for: 08:00 to 18:00 hours Mondays to Wednesday, 08:00 to 21:00 Thursday to Saturday and 08:30 and 17:00 hours Sundays and Bank Holiday Mondays. This application was refused and dismissed at appeal.

8.2.5. The main change proposed from these previous hours (as applied for under application 5/2019/1063) is the reduction of 1 hour (from 21:00 to 20:00) on Thursdays and Fridays. All other hours would be the same as those refused and dismissed at appeal.

8.2.6. The appeal inspector noted the following about the previous hours:



*'Despite the appeal site's city centre location, neighbouring residential occupiers currently have an expectation that customer sound and activity from the café ceases around the current early evening closing time. Extending the opening hours from 18:00 to 21:00 from Thursday to Saturday, would encroach into the evening at a time when neighbouring residential occupiers would be settling down and relaxing. The close proximity of the café's permitted outdoor seating areas to windows and garden spaces of neighbouring dwellings along with the lack of any robust sound barriers or mitigation would result in a significant noise intrusion that would be harmful to neighbouring residents during a part of the day when they would be expecting a reduction in activity and sound emanating from the café use.*

*I have already indicated that there would be harm incurred on residential occupiers by the provision of the proposed additional outdoor seating area. This impact would be exacerbated were the proposed outdoor seating area also to be in use until 21:00 on the days proposed.*

*The proposed earlier opening time of 08:30 on Sundays and Bank Holidays would result in more activity and noise from the cafe being experienced by neighbouring residential occupiers at a time when they currently expect the café to be closed. Whilst I note that this earlier opening time would be similar to that currently operating from Monday to Saturday, it is reasonable to expect some days and particularly the early parts of the morning to be restricted, to allow neighbouring occupiers in close proximity, some quite enjoyment, for example use of a private garden area, without the operation of the café use. Therefore, the proposed earlier opening hours during the days specified would be harmful to neighbouring living conditions.*

*The café's proximity to neighbouring residential occupiers requires careful control of the activity emanating from it, given that the use involves the consumption of food and drink in an external open-air setting. The control of opening hours is one of the means of ensuring those neighbouring living conditions are safeguarded. Consequently, condition 8 continues to be necessary and reasonable in this regard.'*

- 8.2.7. With regards to the earlier opening times on Sundays and bank holidays, it was considered by the appeal inspector that the additional activity from 8.30 in the morning would be harmful to the amenity of neighbouring residents. There has been no change to the site context since the previous application. There are residential dwellings situated along both neighbouring boundaries which would therefore be in close proximity to the external eating areas. Given the above, and that no change is proposed to the opening hours on Sundays and Bank holidays from the previous application, it is considered that the alterations to opening hours on Sundays and Bank holidays would be harmful to the amenity of neighbouring residents.
- 8.2.8. As noted above, the main change to the opening hours from the previously refused hours is the reduction of 1 hour on Thursdays and Fridays (for the café to close at 20:00 rather than at 21:00 as previously proposed). The opening hours on Saturdays would remain the same as the refused scheme (closing at 21:00). The main consideration is therefore whether the reduction of 1 hour on Thursdays and Fridays would overcome the harm noted above by the inspector. This would be a 2 hour increase from the approved hours. Whilst closing at 8pm would decrease noise intrusion into the evening, it is still considered that opening until 8pm would be harmful to the amenity of neighbouring residents as noted above by reason of

the close proximity of residential gardens to the café. The potential noise and disturbance from the café would extend into the evening hours which would likely cause disruption to the neighbouring residents which would be harmful to the amenity of this properties. It should also be noted that whilst the café itself may close at 8pm, there would likely to be noise after this time as there area is cleared which would cause further disturbance.

- 8.2.9. Moreover, it should be noted that there is no change to the opening hours from the hours previously refused on Saturdays which the appeal inspector considered harmful as noted above.
- 8.2.10. It is noted that the Council's Environmental Compliance department previously raised an objection in relation to the change in opening hours and its potential impact on neighbouring amenity. They stated that *'The conditions were originally applied to protect the residential amenity and special characteristics of Cathedral and those seeking to enjoy it. The purpose of limiting the number of tables/chairs/number of people/outside area, to be used, was to try and achieve a balance between the business requirements and its context. The conditions originally applied, served to mitigate against an intensification of the same activities, which would potentially impact negatively on neighbouring amenity. This is on the basis that more people, even behaving quite reasonably, are more likely to make more noise and therein lies the harm, in this context'*. The environmental compliance team have confirmed that this previous objection still stands.
- 8.2.9. Given the above, it is not considered that the changes to the hours proposed from the previous application (a reduction of 1 hour on Thursdays and Fridays), would overcome the harm previously noted by the appeal inspector. Due to the café's proximity to neighbouring residential occupiers, the use requires careful control of the activity emanating from it, as it involves the consumption of food and drink in an external open-air setting. The control of opening hours is one of the means of ensuring those neighbouring living conditions are safeguarded. Consequently, condition 8 continues to be necessary and reasonable in this regard. Therefore, it is not considered that the proposed application would overcome the harm raised under ref. 5/2019/1063 and therefore it is recommended that the application to vary this condition is refused on this basis.

### **8.3** Variation of Condition 13 and removal of Condition 16

- 8.3.1 The application proposes an additional seating area to the north of the existing external eating area. This would lead to an increase in the number of people that can be seated outside of the tea room and therefore would require the removal of condition 16 stated above.
- 8.3.2 The previous application limited the number of tables to no more than 6 tables accommodating a maximum of 24 people in each of the two sections of the outside area (the courtyard and the rear garden). Environmental Compliance have raised concerns that the increase in number of people able to eat outside may potentially impact negatively on neighbouring amenity. This is on the basis that more people, even behaving quite reasonably, are more likely to make more noise and therein lies the harm, in this context.
- 8.3.3 These conditions were included within the previous application to restrict the number of people able to eat outside in the interest of neighbouring amenity. The existing external eating area measures approx. 40sqm. The proposed increase in

outdoor seating would be approximately 35sqm situated along the boundary with No. 10 George Street.

- 8.3.4 The main source of additional noise that may be generated would be from the proposed external seating area. It is noted that there is no change proposed to the external layout from that previously applied for and refused under ref. 5/2019/1063. The appeal inspector noted the following in relation to the proposed layout:

*'George Street comprises a traditional terrace in the city centre with the ground floors along the frontage largely occupied by shops and eating establishments. The upper floors and rear portions of the individual properties are occupied by residential flats and dwellings, while their slender, albeit long private gardens back onto the grounds of the grade 1 listed St. Albans cathedral.*

*The appeal site, a café situated behind the main commercial frontage of George Street occupies a series of connecting outbuildings and an open area. Outdoor seating is restricted to the tearoom courtyard and a rectangular area towards the rear of the site known as the 'al fresco eating area'. Although located in a city centre location, the appeal site's position to the rear of the commercial frontage in close proximity to dwellings and their private gardens, gives the immediate area a residential character.*

*The area of proposed outdoor seating would be partially enclosed by walls and a picket fence. It would adjoin the existing al fresco eating area and be comparable in terms of its size. It would extend to within a short distance of the rear conservatory of No 10 George Street, and be separated from this property and its rear garden by a part wall, part fence boundary. The proposed seating area would also be in close proximity to, and be visible from upper floor rear windows of Nos 8 and 9 George Street. The proposed area would allow for a comparable number of customers to the al fresco eating area while being closer to residential properties. When combined with the existing outdoor seating areas, the resultant social interaction when these areas are in use is likely to create significantly louder noise levels than is presently experienced at the site. The proximity of residents who occupy those dwellings and flats either side of the appeal site, mean that the likely noise levels would be significantly more intrusive than is presently the case and would result in harm to their living conditions. This would be particularly so when residents may wish to have windows open or when utilising rear garden space.*

*Given the proximity of neighbouring residential uses, it is considered that Condition 13 is both reasonable and necessary in restricting the extent and location of outdoor seating areas at the appeal site and would continue to serve a useful purpose in safeguarding the amenity of nearby residents.*

*The appellant makes the point that the proposed seating area would occupy an area of underused space as well as unifying the two permitted areas of outdoor seating. Yet, this would be at the expense of imposing harm upon the living conditions of neighbouring residential occupiers.*

*Number of tables and customers*

*The existing tearoom courtyard abuts the boundary wall with No 10 George Street and is close to its rear projecting wing that has two first floor windows overlooking the space.*

*Condition 16 limits the number of tables and customers in the courtyard and al fresco eating areas to 6 and 24 respectively. Removing this condition would enable more tables and customers to occupy these spaces, and if these were to exceed the current limitations and there was to be no limit on table/customer numbers this would inevitably cause more activity and talking that would intensify the volume of noise from these spaces. With neighbouring windows and gardens of those residential properties in close proximity, the increased noise would be intrusive, particularly when residents have windows open, perhaps during hot weather. This would have a harmful effect on the living conditions of neighbouring occupiers.*

*In the event that condition 16 was removed, it is acknowledged that instances when the number of people exceeding the current limitations could be infrequent. However, any ability to control numbers of customers and associated noise levels, for example from people chatting and crockery and glasses clinking, would be lost. Therefore, the condition is necessary and reasonable at this sensitive location close to residential occupiers.*

*The appellant considers that condition 16 fails the test of enforceability. However, it is clear from the wording of the condition what the limits are on the number of tables and customers that can be seated in the two areas defined. These could be counted without difficulty to ensure compliance; therefore, I consider that the condition is enforceable.*

*I have not been presented with a technical noise assessment in the submitted evidence. Nevertheless, on the basis of the information before me I have been able to apply my own planning judgement in my assessment of the potential noise and disturbance arising from the proposal.'*

- 8.3.5 There has been no change to site context since this decision. There is also no change to the proposed layout in comparison with this decision. No additional information has been submitted which would enable a further assessment of the potential noise to arise from the proposed external eating area and removal of the table number condition. Given the above, it is not considered reasonable to come to a different conclusion to the appeal inspector on this case.
- 8.3.6 It is noted within the submitted planning statement that it is not considered by the applicant that condition 16 is enforceable. However, as noted by the appeal inspector the condition clearly sets out the number of tables and customers which can be seated in the areas and therefore this number can be measured and as such can be enforced.
- 8.3.7 Given the above, it is considered that by reason of the close proximity of residential dwellings to the site, the increase in external eating area and removal of condition 16 would cause increased disturbance to neighbouring dwellings that would be harmful to the amenity of these properties. The application to vary conditions 13 and 16 of planning permission 5/2007/2108 should therefore be refused as set out above.

#### **8.4 Viability and vitality**

- 8.4.1 In the applicant's planning statement it is set out that weight should be given to the scheme's improvements to the viability and vitality of the café. It is noted that the Councillor call-in refers to 'Focus on George Street' which is a proposal by the St Albans Civic Society to 'secure its future'. However, whilst this is acknowledged, it

is also noted that the previous appeal Inspector also comments that *'However, I found that increasing the opening hours into the evening would be harmful, whilst the economic benefits, although positive, would be outweighed by the proposal's harmful effects on the living conditions of neighbouring residential occupiers'*.

- 8.4.2 It is noted that Sections 6 and 7 of the NPPF relate to *'Building a strong, competitive economy'* and *'Ensuring the vitality of town centres'*. In particular, the planning statement makes reference to para. 81 of the NPPF 2019 which states *'Planning Policies should be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances'* and 85 of the NPPF 2019 which states *'Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation'*.
- 8.4.3 It is also noted that Local Plan policy 51 states that *'The council will seek to maintain and enhance the vitality and viability of exiting centres'*.
- 8.4.4 It is noted that a petition has been submitted in support of this application which indicates considerable support for the existing business. Whilst it is acknowledged that the proposal to vary and remove the existing conditions may allow an increased number of visitors to the café which could be considered to improve the viability of the café, this has not been clearly demonstrated within the submission. Moreover, it is not considered that the benefits of improving the viability and vitality of the café/town would outweigh the harm cause to neighbouring amenity as noted above.
- 8.4.5 Para. 127 (d) of the NPPF notes that *'Planning policies and decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users'*. The proposal would fail to create a high standard of amenity of existing neighbouring dwellings and therefore would fail to meet the requirements of this paragraph.
- 8.4.6 The call-in refers to para. 19 (Overall Employment strategy), however, there is no indication that the proposal would increase the number of employees at the café.
- 8.4.7 Weight is given to the local support for the existing business and the economic benefits arising from the proposal however in this case, the proposal would result in significant harm to the residential amenity of neighbouring properties. The harm arising would significantly outweigh these benefits.

## **8.5 Impact on conservation and setting of the Cathedral**

- 8.5.1 The application site is sited within the St Albans Conservation Area (SACA) and is in close proximity to the Cathedral which is a Grade I Listed building. The St Albans Conservation Area Character Statement (SACACS) describes the "peaceful and reflective atmosphere" as one of the positive characteristics of this part of the SACA.
- 8.5.2 The significance of this part of the SACA is therefore derived from the historic medieval fabric of the George Street terrace, the striking presence of St Albans Cathedral and the sense of openness and tranquillity generated by the verdant and undeveloped grounds that surround it.

8.5.3 Condition 13 was imposed in part to safeguard the character of the cathedral precinct within the SACA. The proposed area for outdoor seating would result in further sound and activity emanating from the site. Nevertheless, boundary walls and landscaping would occupy the intervening space between the site and the cathedral grounds that would likely contribute to muffling the sound from the café. Moreover, the additional sound from the site would not fundamentally add to the existing ambient noise environment experienced within the cathedral's grounds given its proximity to the city centre and its associated activity. Therefore, the proposed development would preserve the character and appearance of the SACA and therefore have an acceptable effect on it and therefore would comply with Policy 85 of the Local Plan in this respect.

## **8.6** Parking

8.6.1 The proposal is not considered to impact on car parking provision or result in any harm to highway and pedestrian safety. There are no significant highway issues due to the town centre location of the property. There is no public parking at the site as existing and due to its sustainable location customers can make use of existing public car parks in the locality if required.

## **8.7** Other matters

8.7.1 Concerns were received regarding refuse at the site stating that the refuse provision should be shown on the amended drawings. Whilst the refuse provision is not annotated on the plans, it is not considered that the proposals would impact on the existing refuse collection provision.

8.7.2 Moreover, if permission were to be granted a condition could be proposed to limit refuse/bottle collection and emptying to between 07:30 hours and 19:00 hours nor at any time on Sundays, Bank or Public Holidays, Monday to Saturday in the interests of neighbouring residential amenity.

## **9. Comment on Town/Parish Council/District Councillor Concern/s**

9.1. Addressed above.

## **10. Reasons for Refusal**

10.1. By reason of the increased opening hours and intensification of the courtyard area resulting in the reverberation of sound, the proposal fails to protect the residential amenity of neighbouring properties and therefore fails to comply with Policies 9 and 57 of the St Albans District Local Plan Review 1994.

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**RECOMMENDATION:** Refused

**Decision Code:** R1

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## **11. Conditions**

1. By reason of the increased opening hours and intensification of the courtyard area resulting in the reverberation of sound, the proposal fails to protect the residential amenity of neighbouring properties and therefore fails to comply with Policies 9 and 57 of the St Albans District Local Plan Review 1994.

## 12. Informatives:

1. This determination was based on the following drawings and information: Site Location Plan, Previously approved dated nov. 07, DNG No. DG/1a and DG/2a received and Planning statement received 17/11/2020.

2. The Local Planning Authority has been positive and proactive in its consideration of this planning application. The Local Planning Authority encourages applicants to engage in pre-application discussions as advocated under paragraphs 39-46 of the NPPF. The applicant did not engage in pre-application discussions with the Local Planning Authority and the form of development proposed fails to comply with the requirements of the Development Plan and does not improve the economic, social and environmental conditions of the District.

### **LOCAL GOVERNMENT ( ACCESS TO INFORMATION ) ACT 1985**

<b>Officer</b>	<b>Lilly Ruddock</b>
<b>Section 65 Parties</b>	None
<b>Plans on website</b>	<a href="https://www.stalbans.gov.uk/view-and-track-planning-applications">https://www.stalbans.gov.uk/view-and-track-planning-applications</a>